

REMARKS/ARGUMENTS

Applicants appreciate the thorough examination of the present application, as evidenced by the first Official Action. The Official Action rejects Claims 1-36 under 35 U.S.C. § 112, second paragraph for allegedly being indefinite, the Official Action objecting to the claim language “capable of.” The Official Action then rejects Claims 1, 3-13, 15-25, 27-37, 39-49 and 51-60 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0091849 to Heo, in view of U.S. Patent No. 6,704,576 to Brachman et al. The Official Action then rejects the remaining claims, namely Claims 2, 14, 26, 38 and 50 as being unpatentable over Heo in view of Brachman, and further in view of U.S. Patent No. 6,119,143 to Dias et al. Incidentally, Applicants note that the Official Action actually refers to U.S. Patent No. 7,296,089 to Brachman et al, but as has been confirmed by the Examiner during a brief telephone call with Applicants’ undersigned attorney, the proper citation is to the ‘576 patent number.

As explained below, Applicants respectfully submit that the claims are definite, and patentably distinct from Heo, Brachman and Dias, taken individually or in any proper combination. Nonetheless, Applicants have amended various ones of the claims to further clarify the claimed invention. In view of the amended claims and the remarks presented herein, Applicants respectfully request reconsideration and allowance of all of the pending claims of the present application.

A. The Claims are Definite

As indicated above, the first Official Action rejects Claims 1-36 for including recitations introduced by “capable of” or “adapted to,” alleging that the respective recitations render those claims indefinite under 35 U.S.C. § 112, second paragraph. Applicants respectfully disagree, and note that both “capable of,” as well as “adapted to,” are perfectly acceptable claim language, and that the Official Action does not cite any support for its conclusions. Nonetheless, Applicants have amended various ones of the claims to replace the “capable of” and “adapted to” language with “configured to” language, which Applicants also submit is perfectly acceptable claim language. *See, e.g.,* MPEP § 2173.05(g).

For at least the foregoing reasons, Applicants respectfully submit that the rejection of the claims under § 112, second paragraph, is overcome.

B. Claims 1, 3-13, 15-25, 27-37, 39-49 and 51-60 are Patentable

The Official Action rejects Claims 1, 3-13, 15-25, 27-37, 39-49 and 51-60 as being unpatentable over Heo, in view of Brachman. According to one aspect of the present invention, as recited by amended independent Claim 1 for example, a system includes a plurality of clients and a server. As recited, the server is configured to assign the plurality of clients to one or more groups for the transfer of content to the server and/or from the server. In this regard, the server is configured to assign one or more of the clients based upon a size of the content, a transfer speed, and a probability of transferring the content without experiencing an interruption in the transfer.

In contrast to amended independent Claim 1, neither Heo nor Brachman, taken individually or in any proper combination, teaches or suggests assigning client(s) to group(s) for the transfer of content based on the size of the content, the transfer speed, and probability of transferring the content without experiencing an interruption in the transfer. The Official Action cites Heo for disclosing grouping client(s) based on the size of the content, cites Brachman for disclosing rate (speed) adaptation and error mitigation (probability of transferring content without experiencing an interruption in the transfer), and alleges that it would have been obvious to one skilled in the art to have modified Heo per Brachman to teach the claimed invention. Applicants respectfully disagree.

I. Heo

Briefly, Heo discloses a device for coding audio/video (A/V) data, and transmitting the coded A/V data for users connected to a network. As disclosed, the users are divided into groups of users having similar network states, and the device codes the A/V data so as to adjust the size of the coded data based on those network states. Heo therefore discloses dividing users into groups based on the states of the network from the source device to the respective users. Nowhere, however, does Heo teach or suggest a server configured to assign client(s) to group(s) for the transfer of content based upon a size of that content, as recited by amended independent

Claim 1. As disclosed, Heo does appear to disclose sizing coded A/V data based on the aforementioned network states. But even considering this disclosure, Heo at best discloses fitting the size of content to network states, instead of grouping users based on the size of content as per amended independent Claim 1.

2. Brachman

As cited for allegedly disclosing features of amended independent Claim 1, Brachman discloses the following:

The cellular networks 120, 130 are connected and therefore part of a wide area network, such as core network 110. Core network 110 may also include a proxy/transcoder 115. Proxy/Transcoder 115 provides proxy services for mobile units 124 in some embodiments of the invention. For example, the proxy/transcoder 115 can be used to make the transfer of data more suitable for transmission over the core network (i.e., to enhance the user perceived quality). The specific functions can include: (i) rate adaptation and adding resilience features on a session by session basis, or within a session; (ii) prioritizing the streaming packets, and possibly assigning these packets to different sub-flows; and (iii) shuffling the transmission order of the packets to facilitate receiver-based error mitigation.

Brachman, col. 3, ll. 35-49.

Brachman therefore does appear to disclose a proxy/transcoder for performing rate adaptation, or reordering the transmission of packets to mitigate errors, to enhance user-perceived quality. Amended independent Claim 1, however, does not recite rate adaptation or reordering the transmission of packets. Instead, and in contrast to Brachman, amended independent Claim 1 recites grouping users for the transfer of content based on the speed of transfer and probability of transferring the content without experiencing an interruption in the transfer. That is, amended independent Claim 1 uses the speed of transfer and probability of transferring the content without interruption as a basis for grouping one or more users for the transfer of content. Brachman, on the other hand, discloses adapting the rate of transfer and implementing an error mitigation scheme to enhance user-perceived quality.

3. Combination of Heo & Brachman

Moreover, Applicants respectfully submit that even if one could argue (albeit incorrectly) that Heo discloses grouping client(s) based on the size of the content, and that Brachman discloses rate adaptation and error mitigation, their combination still does not teach or suggest using all of the size of content, speed of transfer, and probability transferring the content without interruption as bases for assigning client(s) to group(s) for the transfer of that content, similar to amended independent Claim 1. That is, the combination of Heo and Brachman still does not teach or suggest assigning client(s) to group(s) for the transfer of content based on the size of the content, the transfer speed, and probability of transferring the content without experiencing an interruption in the transfer, as recited by amended independent Claim 1. Rather, at best one could argue (again, incorrectly) that the combination of Heo and Brachman discloses grouping users based on the size of content (allegedly Heo), and as that content is transferred to those users, performing rate adaptation and error mitigation (allegedly Brachman). Even in this instance, the combination does not teach or suggest that rate or error probability (much less both) is additional bases for grouping users.

Applicants therefore respectfully submit that amended independent Claim 1, and by dependency Claims 2-12, is patentably distinct from Heo and Brachman, taken individually or in any proper combination. Applicants also respectfully submit that amended independent Claims 13, 25, 37 and 49 recite subject matter similar to that of amended independent Claim 1, including at least the feature of assigning client(s) to group(s) for the transfer of content based on the size of the content, the transfer speed, and probability of transferring the content without experiencing an interruption in the transfer. Thus, Applicants also respectfully submit that amended independent Claims 13, 25, 37 and 49, and by dependency Claims 14-24, 26-36, 38-48 and 50-60, are patentably distinct from Heo and Brachman, taken individually or in any proper combination, for reasons similar to those provided above with respect to amended independent Claim 1.

For at least the foregoing reasons, Applicants respectfully submit that the rejection of Claims 1, 3-13, 15-25, 27-37, 39-49 and 51-60 as being unpatentable over Heo, in view of Brachman, is overcome.

C. Claims 2, 14, 26, 38 and 50 are Patentable

The first Official Action rejects Claims 2, 14, 26, 38 and 50 as being unpatentable over Heo in view of Brachman, and further in view of Dias. Applicants respectfully submit, however, that Dias does not cure the defects of Heo and Brachman. That is, even considering Dias, none of Heo, Brachman or Dias, taken individually or in any proper combination, teach or suggest assigning client(s) to group(s) for the transfer of content based on the size of the content, the transfer speed, and probability of transferring the content without experiencing an interruption in the transfer, similar to the claimed invention. Accordingly, Applicants respectfully submit that the claimed invention is patentably distinct from Heo, Brachman and Dias, taken individually or in any combination. And for at least the foregoing reasons, Applicants respectfully submit that the rejection of Claims 2, 14, 26, 38 and 50 as being unpatentable over Heo in view of Brachman, and further in view of Dias, is overcome.

CONCLUSION

In view of the amendments to the claims and the remarks presented above, Applicants respectfully submit that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicants' undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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